tations has run on the debt makes no difference. *Courtenay* v. *Williams*, 3 Hare, 539; *Coates* v. *Coates*, 33 Beav. 249. But a debt unenforceable for any reason other than the statute of limitations will not be set off. *Re Wheeler*, [1904] 2 Ch. 66. The majority of American decisions are in accord with the English view. *Tinkham* v. *Smith*, 56 Vt. 187; *Jordan* v. *Jordan*, 201 Ill. App. 44. This view is based on the theory that there is in substance not a set-off, but a retention of part of a fund in the course of distribution; and that this retention is conscionable because the moral duty to pay the debt persists. See *Webb* v. *Fuller*, 85 Me. 443, 445, 27 Atl. 346; *Holmes* v. *McPheeters*, 149 Ind. 587, 590, 49 N. E. 452, 453. But it may be urged that a legatee's statutory claim is in its nature legal, although in form equitable. At law the statute is a bar, and equity should, as generally in enforcing a legal right, follow the analogy of the statute. *Dean* v. *Dean*, 9 N. J. Eq. 425. The principal case illustrates the trend of the American authorities away from the English view. *Allen* v. *Edwards*, 136 Mass. 138; *Kimball* v. *Scribner*, 174 App. Div. 845, 161 N. Y. Supp. 511.

FEDERAL COURTS — AUTHORITY OF STATE LAW — EFFECT OF DECISION ON VESTED INTERESTS. — In 1838 the United States made a grant to certain Indians, including part of the Arkansas River. In 1907 Oklahoma, including this region, was admitted to the Union. In 1913 the state granted oil and gas rights in the river bed to the defendants. In 1914 the state supreme court, in an action between other parties, found that the river was navigable and that title to adjacent parts of the bottom was in the state. (*State* v. *Nolegs*, 40 Okl. 479, 139 Pac. 943.) The United States sues on behalf of the Indians to enjoin the defendants from extracting oil and gas. The trial court gave judgment for the complainant on the ground that the river was not navigable in fact, and that title to its bed had never passed to the state. *Held*, that the decree be affirmed. *Brewer-Elliott Oil & Gas Co.* v. *United States*, 270 Fed. 100 (8th Circ.).

Federal courts, in determining state law, usually follow the decisions of the state courts. It is particularly important that they should do so where title to realty is affected. *Port of Seattle* v. *Oregon & Washington R. R. Co.*, 255 U. S. 56. But it is now settled law that they will not, in construing a state statute, follow state decisions subsequent to the vesting of rights under the statute. *Great Southern Hotel Co.* v. *Jones*, 193 U. S. 532; *Butte & S. Copper Co.* v. *Clark-Montana Realty Co.*, 248 Fed. 609 (9th Circ.), aff'd, 249 U. S. 12. See 18 HARV. L. REV. 134. While there are obvious advantages in allowing the federal judiciary to exercise an impartial and independent opinion, no reason favoring this exception outweighs the consideration that title should not depend on the litigants' choice of courts. To make a new exception, as the principal case does, is doubly unfortunate. The court has authority for its decision. *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349. But in that case there were other grounds, absent here. It may be that the principal case is supportable without reliance on the rule laid down. The federal court might be justified in considering the state decision on navigability an inconclusive finding of fact. *Cf. Economy Light & Power Co.* v. *United States*, U. S. Sup. Ct., Oct. Term, 1920, No. 104. And it is arguable, as the court suggests, that the Indians got title by the grant, whether the river was navigable or not.

GARNISHMENT — GARNISHMENT BY PLAINTIFF OF DEBTS DUE FROM HIMSELF. — The plaintiff, being unable to get personal service on the defendant, garnished debts which he himself owed to the defendant. The garnishment was executed as provided for by statute. (1910 OHIO GEN. CODE, §§ 11822,

11828). The defendant appeared specially and moved to dismiss the action on the ground that jurisdiction had not been properly acquired. *Held*, that the motion be denied. *Sandusky Cement Co.* v. *A. R. Hamilton & Co.*, 273 Fed. 596 (N. D. Ohio).

The terms of the statute under which this action was brought are broad enough to embrace, as subject to garnishment, debts due from the plaintiff. Under this statute the garnishee is not considered a party to the action. *Secor* v. *Witter*, 39 Ohio St. 218, 231. See *Conley* v. *Chilcote*, 25 Ohio St. 320. The result reached in the principal case is not, therefore, open to the objection that one party is both plaintiff and defendant. See *Belknap* v. *Gibbens*, 13 Met. (Mass.) 471. The result is, moreover, in harmony with the decisions under the Custom of London of foreign attachment, the predecessor of the American garnishment statutes. *Paramore* v. *Pain*, Cro. Eliz. 598. See 1 COM. DIG., 1785 ed., 423. See *Graighle* v. *Notnagle*, Fed. Cas. No. 5679. See SERGEANT, ATTACHMENT, 205. Where garnishment statutes are not broad enough in terms to include debts due from the plaintiff, a situation is found analogous to that which existed when the terms in which the Custom of London was averred were similarly restricted. *Nonell* v. *Hullett*, 4 B. & Ald. 646. The principal case is merely a logical application of the doctrine that in garnishment proceedings personal jurisdiction of the defendant is unnecessary. *Harris* v. *Balk*, 198 U. S. 215. The perils to which defendants are exposed by the result in this case afford an added objection to the doctrine to which it is a corollary. See Joseph H. Beale, "Jurisdiction *In Rem* to Compel Payment of Debt," 27 HARV. L. REV. 107. But see Charles E. Carpenter, "Jurisdiction over Debts," 31 HARV. L. REV. 905, 909.

HOMESTEAD — WHAT PROPERTY IS SUBJECT TO MORTGAGE EXECUTED BY HUSBAND ALONE. — By statute, a homestead cannot be mortgaged unless the mortgage is executed by both husband and wife. (1913 N. D. COMP. LAWS, § 5608.) The statute fixes the homestead exemption at $5000. (1913 N. D. COMP. LAWS, § 5605.) A husband and wife executed a mortgage of $2500 on homestead property worth $7200. The husband executed a second mortgage of $1500 on the same property. The second mortgagee seeks to foreclose. *Held*, that the second mortgage is valid. *First National Bank* v. *Hallquist*, 184 N. W. 269 (N. D.).

Where two parcels of land, one homestead and the other not, are validly mortgaged to the same mortgagee, and later a lien attaches to the non-homestead land, it has been held that the first mortgagee must satisfy himself, so far as possible, from the non-homestead land, though this cuts off the second lienholder. *Frick Co.* v. *Ketels*, 42 Kan. 527, 22 Pac. 580; *Butler* v. *Stainback*, 87 N. C. 216; *Cf. Brown* v. *Cozard*, 68 Ill. 178. Similarly, if there is but one piece of property, the value of which exceeds the homestead exemption, and this is sold under a mortgage valid against the homestead, junior liens not valid against the homestead cannot reach the excess proceeds until the homestead value is deducted therefrom. *White* v. *Horton*, 154 Cal. 103, 97 Pac. 70; *In re Barrett's Estate*, 140 Fed. 569 (D. Ore.). This, in effect, is making the homestead exemption a lien on the property, subordinate to a mortgage valid against the homestead, but superior to any other mortgages or liens. Such a result, though not undisputed, seems in harmony with the policy of the Homestead Acts. See 3 FREEMAN, EXECUTIONS, 3 ed., § 440. It should make no difference which mortgagee first seeks to foreclose. Applying this doctrine to the present case: the first mortgage is for $2500; the value of the property is $7200; the $4700 left is entirely covered by the homestead exemption. As the second mortgage is good only to the extent of any excess, and there is no excess, it should be held invalid.